

March 9, 2009

Late Backup

VIA E-MAIL AND HAND DELIVERY

Council Member Lee Leffingwell
Council Member Mike Martinez
PO Box 1088
Austin, Texas 78767

Re: Zoning Case C14-2008-0099 for the properties located at 1600-1606 E. MLK Blvd.
SF-3-NP to LR-MU-V-CO-CURE-NP

Dear Council Member Leffingwell and Council Member Martinez,

Thanks again for taking time to meet with me, Carter Shanklin, Ryan Diepenbrock, representing the applicant, and Roy Cipple, representing the Blackland Neighborhood Association, on February 5, 2009. We all appreciate your willingness to review the re-zoning for this project which is recommended by the Planning Commission and is supported by the Blackland Neighborhood Association.

As you recall, pursuant to the project's Zoning & Development Agreement with the Blackland Neighborhood Association, the Blackland Neighborhood Association is supporting the re-zoning change whether or not certain height/set-back variances are eventually obtained. In the Zoning & Development Agreement, the project committed to certain affordable rental housing requirements for forty (40) years and certain profit-sharing with the Blackland Community Development Corporation if the height/set-back variances were obtained.

The project has now entered into a Restrictive Covenant with the Blackland Neighborhood Association guaranteeing a baseline/minimum rental affordable housing component for the project for forty (40) years even if the affordable housing requirement contained in the Zoning & Development Agreement becomes inoperative because the height/set-back variances are not obtained. The Restrictive Covenant has been executed by the owner of the land and the Blackland Neighborhood Association. It has been recorded in Document No. 2009034871, Official Public Records of Travis County, Texas. The first attachment to this letter is a copy of this Restrictive Covenant. The Restrictive Covenant provides that:

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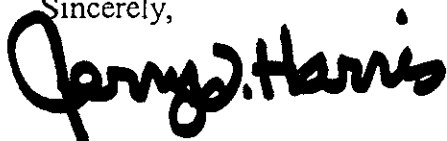
1. **Ten Percent (10%) of the habitable residential square footage of the project will be made available as affordable rental units for families whose income level is at the sixty percent (60%) Median Family Income level.**
2. **The affordable units will not be clustered in one location in the project but will be intermingled with the other residential units in the project.**
3. **The Blackland Neighborhood Association is designated an enforcement party and is entitled to the recovery of its attorney's fees and costs incurred in any successful enforcement action that it undertakes.**

The second attachment to this letter is a copy of the most recent letter from Alan Hampton, President of the Blackland Neighborhood Association, to the City Council expressing the Blackland Neighborhood Association's unequivocal support for the re-zoning regardless of the outcome of the height and setback variances that the project will be seeking.

Finally, the third attachment to this letter is a copy of a letter of support for the re-zoning from Michael Garrison, who is a 5-year member of the Blackland Neighborhood Association, is a neighborhood resident and is a Professor of Architecture at the University of Texas. Professor Garrison has long been involved in urban planning and green energy issues.

We hope that you will agree that the project's commitments combined with the support of the Blackland Neighborhood Association, arrived at after 15 months of cooperation, negotiation and compromise has resulted in a project that offers benefits to all. We appreciate your time and consideration.

Sincerely,



Jerry L. Harris

Enclosures

cc: Robert Heil, City of Austin (Via e-mail)
Alan Hampton, President of Blackland Neighborhood Association (Via e-mail)
Carter Shanklin (Via e-mail)
Jerry Diepenbrock (Via e-mail)
Ryan Diepenbrock (Via e-mail)
Nancy Williams (Via e-mail)
Andrew Moore (Via e-mail)

From: Blackland Neighborhood Association [REDACTED]
Sent: Thursday, February 05, 2009 10:33 AM
To: Ryan Diepenbrock
Cc: Carter Shanklin; alan.hampton@tgsllc.org; Michael Garrison; Jerry Diepenbrock
Subject: Re: MLK property

Dear Councilmember,

Good Morning,

I am writing to you once again on behalf of the Blackland Neighborhood Association. As an active member of that association for the last several years, and as the newly elected president of the association, I have been actively involved in the negotiations with the developers for over a year now, and have been asked by the developers to clarify the associations position.

We have spent a great deal of time and effort on this issue, working for over a year to find common ground between very different visions for this property and our neighborhood. At times the discussions were a little heated, but both sides negotiated in good faith. I have seen a letters from neighbors claiming intimidation and lies from the developers and from BCDC, but it simply is not true in either case. The parties on both sides presented their strongest arguments and glossed over the weaknesses, and at times puffed up their chests to show their determination to get their way, but the neighborhood remained determined throughout to work until the best solution for us was reached. This compromise you are voting on may not be what the BCDC wanted, or what the developers wanted, but it is what the neighborhood wants. Specifically in regards to the letter from Ora Houston, I would mention that Ora is a valuable and cherished voice in our neighborhood, but she has not participated in the neighborhood association for over a year now and is not in a position to describe the negotiations or the negotiators.

As to the zoning case itself, the neighborhood association understands and has discussed the fact that zoning and the variances are separate issues to be denied or granted by separate bodies. We voted as an association a long time ago (about a year) to seek Mixed use development on this property. With the UT stadiums and other properties so close, and the new rail station down the road, this is one of the best locations for more intense development in our neighborhood. Our desire to see mixed use here was mixed with worry about some of the related impacts of that development, but all of these issues have been negotiated to our satisfaction. WE APPROVE OF THE COMPROMISE IN FRONT OF YOU.

I am personally excited to see the actual zoning ordinance that Councilmember Leffingwell has been working on. Moving these restrictions from the separate contract into the zoning ordinance itself helps remove some of my fears about enforcing the contract by giving our special considerations the weight of zoning. We support this zoning change, WITH OR WITHOUT the variances. We will still support the variances, as we would like to see all parking underground, and the variances provide a means of allowing that, but that is icing on the cake. All of the major sticking points that were worked out with so much time and effort over the last year, are addressed even without the variances. Traffic in the neighborhood has been lessened by moving the main site access to MLK. Height on the Leona side of the site will be reasonable with or without

the variance. Affordable housing has been addressed, and while BCDC still desires more, some feel that this is mitigated by the current concentration affordable housing already in the neighborhood - we already have more affordable housing, owned by a non-profit and not subject to property taxes, than 99% Austin's neighborhoods. Our commitment to affordable housing remains strong, but the majority of the neighbors felt that the subject is adequately addressed in the agreement.

Once again, our support of this zoning is not in any way tied to approval or rejection of the variances, and we request that council support our vision for our neighborhood by passing this zoning. We would also like to give a very deep felt "Thank You" to council and staff, particularly Councilmember Leffingwell, for your interest and hard work in making sure that our neighborhood's interests are protected. We appreciate this more than you know.

Sincerely,

Alan Hampton

President

Blackland Neighborhood Association

cc Councilmember Leffingwell

Councilmember Martinez

zoning case at 1600 MLK

From: [REDACTED]

Sent: Thu 2/05/09 2:31 PM

lee.leffingwell@ci.austin.tx.us; mkie.martinez@ci.austin; laura.morrison@ci.austin.tx.us;

To: sheryl.cole@ci.austin.tx.us; brewster.mccracken@ci.austin.tx.us;

matt.watson@ci.austin.tx.us

Cc: [REDACTED]

Dear Members of the Council,

I write as a five year resident of the Blackland Neighborhood to express my support for the proposed zoning change at 1600 MLK.

As a member of the Land Use committee of the Blackland Neighborhood Association I have along with others worked for over 14 months in good faith with the project developers on modifications to their proposal for the property located in the 1600 block of MLK. After many meetings with the developers they agreed to most of our neighborhood concerns including a compromise on the maximum height, limiting the height along Leona, limiting traffic, limiting the access and egress to the project via Leona, agreeing to at least a 3 star green building rating, providing at least 6 affordable housing units, and providing up to \$100,000 as a donation to the Blackland CDC for affordable housing. They have also agreed to make these conditional overlays part of the deed restrictions and/or zoning so that the provisions would be enforced on the property even if they were not successful in receiving needed variances from the compatibility commission prior to their moving forward on the project. Bo McCarver, the chair of our Land Use committee was the lead neighborhood negotiator with the developers and reached an agreement that the Land Use committee and the Blackland Neighborhood Association approved.

Because Bo McCarver and other members of the Blackland CDC have been the primary negotiators for the Blackland Association Land Use committee, I do not pretend to understand why they have decided now to oppose the agreement. They have expressed a concern about rising property values and rising taxes. The solution I believe is in tax abatement through Tax Increment Financing (TIF) championed by Representative Eddie Rodriguez. Stopping all growth in East Austin reduces the value of East Austin property and the equity that long time residents of East Austin have built up in their property.

The Blackland Neighborhood Association has voted that the best use of this property should be Mixed Use development. The 1600 block of MLK is located on a major transit corridor, MLK near the UT baseball stadium, is on the east side of Leona in area dominated by University of Texas Properties. If you can't build a vertical mixed use project here that is supported by the neighborhood association where in the City could you build one?

Infill development at a greater density in mixed use vertical zoning provides more inner city affordable housing units and is an alternative to sprawl. These kinds of mixed use developments along transit corridors create a more dense, walkable, vibrant and ultimately sustainable city fabric. This image of the future is the alternative to a deteriorating central city with ever expanding sprawl.

I urge you to consider approving this zoning change proposal.

Kind Regards,

Michael Garrison
2103 East 22nd Street
Austin, Texas 78722



RESTRICT 2009034871

4 PGS

2/11/09

RESTRICTIVE COVENANT

ORIGINAL
FILED FOR RECORD

STATE OF TEXAS §
COUNTY OF TRAVIS §

WHEREAS, E-MLK Properties, L.L.C., a Texas limited liability company ("Owner") is the owner of Lots 1, 2, 3 and 4, Block 2, C.R. Johns and Co. Subdivision of Outlot No. 45, Division "B", located in Travis County, Texas according to the map or plat thereof of record in Volume 1, Page 3, Plat Records of Travis County, Texas (the "Property"). The Property is locally known as 1600, 1602, 1604 and 1606 East Martin Luther King Jr. Boulevard, Austin, Texas, and

WHEREAS, the Blackland Neighborhood Association has as its members owners and residents of property located within the boundaries of the Blackland Neighborhood Association as reflected in the files of the City of Austin, Texas, and

WHEREAS, the Blackland Neighborhood Association is organized and operates as an advocate to various governmental agencies of the interests of owners and residents of property located within the boundaries of the Blackland Neighborhood Association, and

WHEREAS, the Property is located within the boundaries of the Blackland Neighborhood Association, and

WHEREAS, Owner has applied to the City of Austin, Texas for a zoning change and neighborhood plan amendment for the Property in Case Numbers NPA-2007-0012.02 and C14-2008-0099 (collectively, the "Zoning Application"), and

WHEREAS, the Zoning Application requests (i) that the zoning on the Property be changed from Single-Family Residence-3-Neighborhood Plan Combining District (SF-3-NP) to Neighborhood Commercial-Mixed Use-Vertical Mixed Use Building-Conditional Overlay-Central Urban Redevelopment District-Neighborhood Plan Combining District (LR-MU-V-CO-CURE-NP) and (ii) that the Upper Boggy Creek Neighborhood Plan be amended to designate the Property for "Neighborhood Mixed Use", and

WHEREAS, the Blackland Neighborhood Association supports the approval of the Zoning Application, and

WHEREAS, the parties hereto want to set forth their agreement as to what the baseline/minimum affordable housing requirement will be for the Property in the event the affordable housing provisions in that certain Zoning and Development Agreement (the "Zoning and Development Agreement"), dated December 11, 2008, to which the Blackland Neighborhood Association and PSW Jacaranda LLC are parties, do not become operative, and

WHEREAS, Owner and Blackland Neighborhood Association have agreed that the Property should be impressed with certain covenants and restrictions running with the land which reflect the above agreements.

NOW THEREFORE, Owner, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid to Owner by Blackland Neighborhood Association, the receipt and sufficiency of which is hereby acknowledged by Owner, does hereby agree with the following with respect to the Property, said agreement to be deemed and considered as a covenant running with the land which shall be binding on Owner, its successors and assigns:

1. **Affordable Housing Requirement.** For forty (40) years from the date a certificate of occupancy is issued for a residential project located on the Property, ten percent (10%) of the habitable residential square footage shall be rental units (the "Affordable Units") available to families whose income level is at the sixty percent (60%) Median Family Income level ("MFI"). Owner shall have the right to designate the location of all of the Affordable Units at Owner's sole and absolute discretion; provided however the Affordable Units shall not be clustered in one location in the residential project but will be spread out and intermingled with the other residential units in the project.
2. **Relationship to Zoning and Development Agreement.** This Restrictive Covenant does not supersede or replace the Zoning and Development Agreement but provides mandatory baseline/minimum affordable housing obligations in the event the affordable housing provisions in the Zoning and Development Agreement do not become operative under the terms and conditions set forth in the Zoning and Development Agreement.
3. **Termination in the Event the Zoning Application is Denied.** In the event the Zoning Application is denied by the Austin City Council, this Restrictive Covenant shall automatically terminate and thereafter be null and void. If requested to do so by Owner, the Blackland Neighborhood Association shall execute a recordable document acknowledging such termination.
4. **Enforcement of Restrictive Covenant.** The terms and conditions of this Restrictive Covenant may be enforced by (i) the president or the board of directors of Blackland Neighborhood Association or (ii) the president or the board of directors of any successor association to Blackland Neighborhood Association. Enforcement actions may be brought only after written notice of violations have been mailed by US certified mail, return receipt requested, to Owner, its successors or assigns and only if the notice violations have not been cured within ninety (90) days after the receipt of said notice by Owner, its successors or assigns. In the event a party bringing suit for enforcement of this Restrictive Covenant prevails in the enforcement suit, said party shall be entitled to recover their reasonable attorney's fees and their costs of court.
5. **Modification, Amendment or Termination.** Except for the termination provided for in paragraph 3 above, the terms and conditions of this Restrictive Covenant may be modified, amended or terminated only by joint action of the Board of Directors of Blackland Neighborhood

Association (or any successor organization to Blackland Neighborhood Association) and the Owner of the Property, its successors and assigns.

Executed as indicated below.

OWNER:

E-MLK Properties, L.L.C., a Texas limited liability company

By:

Jerry T. Springer
Jerry T. Springer, Manager

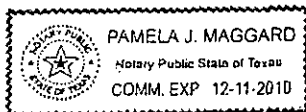
Blackland Neighborhood Association

By:

Alan Hampton
Alan Hampton, President

STATE OF TEXAS
COUNTY OF TRAVIS

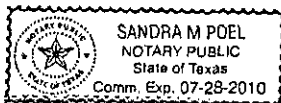
This instrument was acknowledged before me on the 25th day of February, 2009, by Jerry T. Springer, Manager of E-MLK Properties, L.L.C., a Texas limited liability company, on behalf of said limited liability company.



Pamela J. Maggard
Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was acknowledged before me on the 5th day of March, 2009, by Alan Hampton, President of Blackland Neighborhood Association, on behalf of said neighborhood association.



Sandra M. Poel
Notary Public, State of Texas

AFTER RECORDING RETURN TO:
Jerry L. Harris



RESTRICT 2009034871

Brown McCarroll, LLP
111 Congress, Suite 1400
Austin, TX 78701

Return

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2009 Mar 05 03:45 PM 2009034871

GONZALES \$28.00

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS